

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

RECEIVED CLERK'S OFFICE

United States District Court		District OF SOUTH CAROLINA	
Name (under which you were convicted): BERNARD HEZEKIAH DRAYTON		Docket or Case No.: 2:98-cr-00751-PMD-2	
Place of Confinement: MCCREARY UNITED STATES PENITENTIARY		Prisoner No.: 87738-071	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted) BERNARD HEZEKIAH DRAYTON	

MOTION

1. (a) Name and location of court that entered the judgment of conviction you are challenging: IN
UNITED STATES DISTRICT COURT DISTRICT OF SOUTH CAROLINA AT
CHARLESTON

- (b) Criminal docket or case number (if you know): 2:98-cr-00751-PMD-2
2. (a) Date of the judgment of conviction (if you know): JUNE 6, 2001

- (b) Date of sentencing: FEBRUARY 25, 2002
3. Length of sentence: LIFE AS TO COUNT(S) ONE-TWO, 60MONTHS COUNT FOUR, 360COUNT SIX
4. Nature of crime (all counts): CONSPIRACY TO OBSTRUCT INTERSTATE COMMERCE BY ROBBERY;
OBSTRUCTION OF INTERSTATE COMMERCE BY ARMED ROBBERY; CONSPIRACY TO USE
OR CARRY A FIREARM; USING AND CARRYING A FIREARM IN CRIME OF VIOLENCE;
FELON IN POSSESSION OF FIREARM

5. (a) What was your plea? (Check one)
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? N/A

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:

(a) Name of court: U.S. COURT OF APPEALS FOR FOURTH CIRCUIT

(b) Docket or case number (if you know): 02-4234

(c) Result: AFFIRMED

(d) Date of result (if you know): NOVEMBER 7, 2002

(e) Citation to the case (if you know): _____

(f) Grounds raised: INSUFFICIENT OF EVIDENCE TO SUPPORT 18 U.S.C. 1951
CONVICTION; FAILURE TO PROVIDE NOTICE OF ENHANCEMENT UNDER 18
3559; 21 U.S.C. 851; INDICTMENT AS TO COUNT FOUR AND SIX WAS
INSUFFICIENT TO FAIRLY INFORM SPECIFIC FIREARM; JURY WAS REQUIRED
UNANIMOUSLY TO FIND SPECIFIC FIREARM.

- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

(5) Grounds raised: N/A

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: _____ N/A _____

(5) Grounds raised: _____ N/A _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: _____ N/A _____

(8) Date of result (if you know): _____ N/A _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____ N/A _____

(2) Docket or case number (if you know): _____ N/A _____

(3) Date of filing (if you know): _____ N/A _____

(4) Nature of the proceeding: _____ N/A _____

(5) Grounds raised: _____ N/A _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐ N/A

(7) Result: _____ N/A _____

(8) Date of result (if you know): _____ N/A _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐ N/A

(2) Second petition: Yes ☐ No ☐ N/A

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: NO MOTION, PETITION, OR APPLICATION HAS BEEN FILED OR PURSUED ON BEHALF OF THE PETITIONER.

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: THE ENHANCED SENTENCE AMOUNTED TO A FIFTH AMENDMENT VIOLATION UNDER JOHNSON v. UNITED STATES 135 S.CT. 2551 (2015)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE PETITIONER'S SENTENCE AMOUNTED TO A FIFTH AMENDMENT VIOLATION WHEN IT WAS INCREASED PURSUANT TO 18 U.S.C. 3559(c)(1) BASED UPON THE PRIOR CONVICTION OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, WHICH DOES NOT POSE THE DEGREE OF RISK REQUIRED TO COME WITHIN THE DEFINITION FOR A SERIOUS VIOLENT FELONY, 18 U.S.C. § 3559(c)(2)(F)

(ii)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: THIS ISSUE WAS NOT RAISED BECAUSE IT RELY UPON NEW RULE OF CONSTITUTION LAW RECENTLY MADE RETROACTIVE TO COLLATERAL REVIEW

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND TWO: THE PETITIONER'S CONVICTION AND RESULTING SENTENCE FOR USING AND CARRYING A FIREARM UNDER 18 U.S.C. § 924(c)(1) IS UNCONSTITUTIONAL

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE PETITIONER'S CONVICTION AND SENTENCE FOR USING AND CARRYING A FIREARM IN RELATION TO A CRIME OF VIOLENCE MUST BE VACATED IN LIGHT OF JOHNSON V. UNITED STATES, WHEN THE DEFINITION FOR A "CRIME OF VIOLENCE" CONTAINED IN 18 U.S.C. § 924(c)(3)(B) IS UNCONSTITUTIONALLY VAGUE IN VIOLATION OF DUE PROCESS OF LAW.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: THIS ISSUE WAS NOT RAISED BECAUSE IT RELY UPON A NEW RULE OF CONSTITUTIONAL LAW RECENTLY MADE RETROACTIVE TO CASES ON COLLATERAL REVIEW

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND THREE: THE PETITIONER'S SENTENCE AMOUNTED TO A VIOLATION OF DUE PROCESS UNDER THE RESIDUAL CLAUSE, OF 18 U.S.C. § 924(e)(2)(B)(ii)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

THE PETITIONER'S SENTENCE AMOUNTED TO VIOLATION UNDER THE FIFTH AMENDMENT, WHEN IT WAS INCREASED UNDER THE ARMED CAREER CRIMINAL ACT ("ACCA") THE RESIDUAL CLAUSE, PURSUANT TO 18 U.S.C. § 924(e)(2)(B)(ii) WHICH HAS BEEN DECLARED UNCONSTITUTIONALLY VAGUE UNDER THE DECISION ANNOUNCED IN JOHNSON v. UNITED STATES, 135 S.Ct. 2551 (2015)

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: THIS ISSUE WAS NOT RAISED BECAUSE IT RELY UPON A NEW RULE OF CONSTITUTIONAL LAW RECENTLY MADE RETROACTIVE TO CASES ON COLLATERAL REVIEW

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐ N/A

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐ N/A

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐ N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐ N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐ N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

Docket or case number (if you know): N/A

Date of the court's decision: N/A

Result (attach a copy of the court's opinion or order, if available): N/A

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: N/A

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: ALL GROUNDS RAISED HAVE NOT BEEN PRESENTED BEFORE

ANY COURT OF LAW, SPECIFICALLY BECAUSE ALL GROUNDS ARE

SURROUNDING THE DECISION ANNOUNCED IN JOHNSON V. UNITED STATES

135 S.CT. 2551 (2015)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: JOHN ROBERT HALEY, P.O. BOX # 876, CHARLESTON
SOUTH CAROLINA 29402

(c) At trial: ANN BRIKS WALSH, P.O. BOX # 876, CHARLESTON, SOUTH
CAROLINA 29402

(d) At sentencing: SAME AS PARAGRAPH (C)

(e) On appeal: DAVID G. PAGLIARINI, 895 ISLAND PARK DR, SUITE
203, CHARLESTON, SOUTH CAROLINA 29402

(f) In any post-conviction proceeding: N/A

(g) On appeal from any ruling against you in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

Therefore, movant asks that the Court grant the following relief:

THE PETITIONER HEREBY RESPECTFULLY URGES THAT THIS HONORABLE
COURT GRANT THE RELIEF OF VACATING THE APPROPRIATE CONVICTION AND
SENTENCES WHICH WERE IMPOSED IN VIOLATION OF THE U.S. CONSTITUTION

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct

and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on

JUNE 6, 2016 (month, date, year). x

Executed (signed) on JUNE 6, 2016 (date). x

x Hesekiah Bernard Drayton
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion.

